



Comptroller General
of the United States

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Washington, D.C. 20548

Decision

Matter of: Thiokol Corporation--Reconsideration

File: B-256162.3; B-257058.2

Date: September 20, 1994

Luther C. Johnson for the protester.
Mary G. Curcio, Esq., and John Van Schaik, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

Where protests are dismissed for failure to file comments within 10 working days after receipt of agency report, protester's failure to receive report does not provide a basis for reconsidering dismissal when the protester did not notify the General Accounting Office that it had not received the report until more than 10 working days after the report due date.

DECISION

Thiokol Corporation requests reconsideration of our dismissal of the protests it filed against provisions in request for proposals (RFP) Nos. DAAA09-93-R-0262 (RFP -0262) and DAAA09-93-R-0264 (RFP -0264). We dismissed the protests because Thiokol failed to file comments on the agency report within 10 working days after the report due date, as required by our Bid Protest Regulations, 4 C.F.R. § 21.3(j) (1994). Thiokol requests that we reconsider our dismissals.

We deny the request for reconsideration.

Thiokol filed its protest concerning RFP -0262 with our Office on March 17, 1994. On March 22, we requested a report on the protest from the Army with a scheduled due date of April 22. Also, on March 22, we sent Thiokol a notice that acknowledged its protest and explained the procedures and deadlines for filing comments on the agency report. Specifically, the notice stated that the agency report was due on April 22, and that Thiokol must either file with our Office comments or a request to consider the protest on the written record within 10 working days of its receipt of the report. The notice further advised the protester that for purposes of determining when its response

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to the agency report would be due, we would assume that it had received the report on the scheduled due date unless we were otherwise notified. Finally, the notice advised the protester that failure to respond to the report within the required time would result in the dismissal of its protest.

On April 18, Thiokol filed its protest against RFP -0264, raising the same grounds of protest as it raised against RFP -0262. On April 22, the Army submitted its report on the earlier protest concerning RFP -0262. On April 28, the Army submitted a written request to our Office that we consolidate the two protests because they raised identical issues. The Army further requested that we consider the report it submitted in response to the protest against RFP -0262 as its report for the second protest concerning RFP -0264. The Army provided a copy of that request to Thiokol by facsimile transmission. After consulting with Thiokol, it was agreed that we should consider the protests together. During this conversation, Thiokol's representative did not indicate that it had not received the agency report on its protest of RFP -0262. On May 17, we dismissed both protests under 4 C.F.R. § 21.3(j) because Thiokol had not submitted comments in response to the agency report within 10 working days after April 22, the due date for the report on RFP -0262.¹

Thiokol explained that it failed to submit comments on the agency report because it never received the report. Thiokol also asserts that if it had not intended to pursue the protests, it would not have agreed to consolidate them.

The purpose of the comment filing deadline is to enable this Office to resolve protests expeditiously, as mandated by the Competition in Contracting Act of 1984. It would be contrary to our goal of expeditious resolution for us to hold open protests on which the protester has neither filed comments, advised us to consider the protest on the written record, or requested an extension within the 10-day period. Thus, where a protester fails to take one of these actions, or to inform us within 10 days after the report due date that it has not received the report, its protest is properly dismissed and will not be reopened simply because the protester later asserts that it did not receive the report on the due date. Image Contracting--Recon., B-255632.2,

¹On May 3, the Army sent Thiokol a facsimile transmission which acknowledged that we were consolidating the protests and which stated that the agency provided a copy of RFP -0264 to our Office in lieu of an agency report. Even if we were to count the due date for Thiokol's comments from May 3, the comments were required to be submitted no later than May 17, 10 working days later.

Feb. 18, 1994, 94-1 CPD ¶ 126. Accordingly, since Thiokol did not notify our Office within 10 working days following April 22 that it had not received the report, we will not reopen Thiokol's protests. Although Thiokol states that it would not have agreed to consolidate the protests if it did not intend to pursue the protests, we require protesters to comment on the report within the 10-day period after receipt of the report because it is not uncommon for a protester to lose interest in a protest upon reading the agency report. See Access Flight Servs.--Recon., B-242644.2, Apr. 8, 1991, 91-1 CPD ¶ 359.

The request for reconsideration is denied.


James Spangenberg
Acting Associate General Counsel